

# **Wetland Protection 24 CFR Part 58.5(b)(2)**



# Protection of Wetlands

- What are wetlands?
- Value of wetlands
- Wetland Regulations
- Wetlands Identification
- ERR Documentation



# WHAT ARE WETLANDS?



# Definition

"those areas that are inundated or saturated by surface or ground**water** at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of **vegetation** typically adapted for life in saturated **soil** conditions. Wetlands generally include swamps, marshes, bogs and similar areas."

Section 404, Clean Water Act





# What are Wetlands?

Require the presence of three conditions:

☐ Hydric **soils**



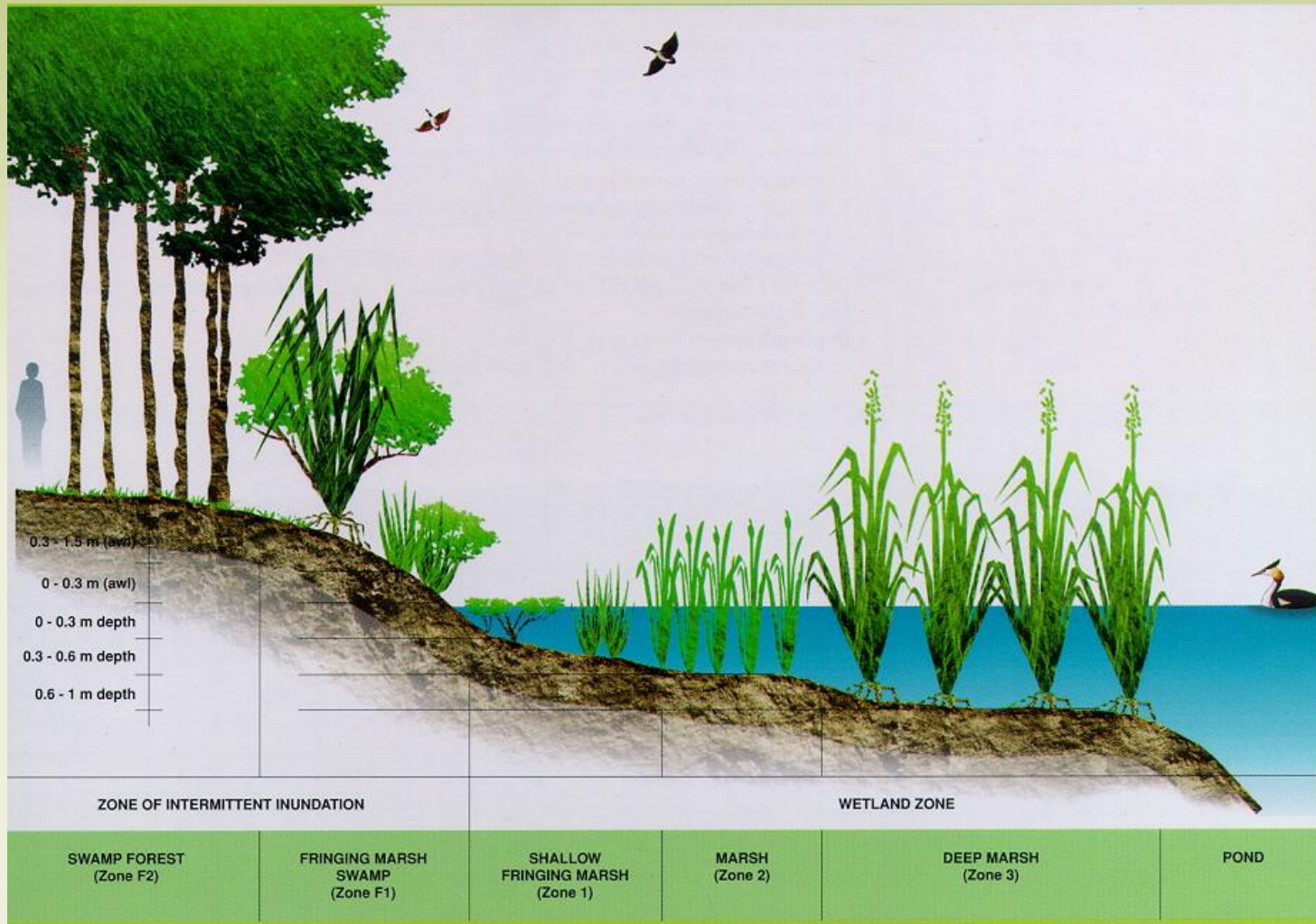
☐ Hydrophilic **vegetation**



☐ Year-round & seasonal **water** requirements



# What are Wetlands?





# What are Wetlands?

- Wetlands may not be wet year-round and, in fact, **some of the most important wetlands are seasonally dry**
- Wetlands are often found in association with **floodplains**
- Wetlands may be “waters of the U.S” – and therefore subject to the jurisdiction of the Corps of Engineers, a.k.a., **“jurisdictional”** wetlands
  - But protection also extends to **“isolated”** wetlands – that is, **“non-jurisdictional”**



# VALUE OF WETLANDS





# Value of Wetlands



Wetlands are among the most valuable....

...but least understood of all natural resources

- Wetlands are the link between land and water, where the flow of water, the cycling of nutrients and the energy of the sun meet to produce **highly productive ecosystems**
- In this transition zone between land and water, they provide **flood control**, acting as reservoirs to absorb excess water

# Value of Wetlands

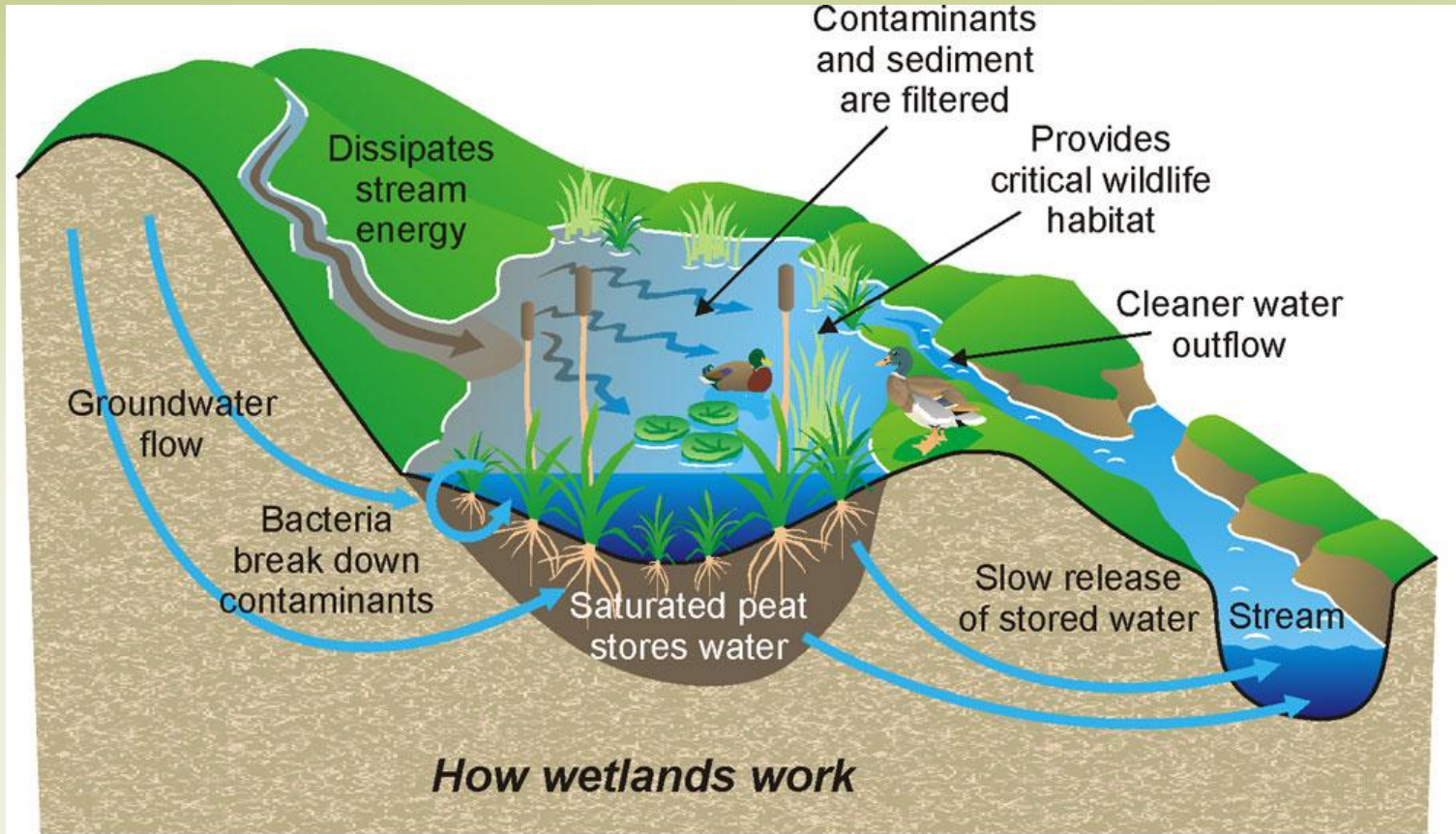
Wetlands serve multiple beneficial purposes ...



- act as filters, **removing pollutants**, including metals, from waters
- provide **habitats** for a great variety of plant and animal species, some endangered, that have evolved to live in the wetland's unique conditions
- provide for **aquifer recharging**
- shoreline **erosion control**
- **recreation and aesthetics**



# Value of Wetlands



# Value of Wetlands





# **WETLAND REGULATIONS**



# Wetland Regulations

Wetlands are primarily protected by **two** authorities that discourage activities in wetlands ...

## *Executive Order 11990, “Protection of Wetlands”(1977)*

“...**avoid** to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to **avoid** direct or indirect support of new construction in wetlands wherever there is a practicable alternative...”

## *Section 404 of the Clean Water Act (1977)*

Dredging or filling wetlands (“Waters of the US”) requires a Section 404 permit from the Army Corps of Engineers

# **Executive Order 11990- Protection of Wetlands (1977)**

- Furthers NEPA to Avoid to the extent possible
  - Long and short-term adverse impacts associated with destruction or modification of wetlands
  - Avoid support for new construction in wetlands when there is a practicable alternative
- Requires federal agencies to take action to:
  - Minimize destruction, loss or degradation of wetlands
  - Preserve and enhance natural and beneficial values of wetlands

# Terms

- New Construction means:
  - Draining, dredging, channelizing, filling, diking, impounding and related activities
- Wetland means:
  - Areas inundated by surface or ground water with a frequency that supports prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction
  - Includes swamps, marshes, bogs, sloughs, potholes, wet meadows, river overflows, mud flats, natural ponds



# New Construction in Wetlands

- Agencies are to avoid construction in wetlands unless they find:
  - No practicable alternatives, or if the
  - Action includes all practicable measures to minimize harm to wetlands
- Factors considered in making a finding include:
  - Economic
  - Environmental
  - Other pertinent factors
- Requires early public review

# Agencies Must Consider

- A proposed action's effect on the survival and quality of wetlands
- Factors to be considered:
  - Public health, safety and welfare
  - Maintenance of natural systems
  - Other uses of wetlands in the public interest

# 8-Step Process Required for HUD Projects

- RE compliance for HUD funded projects is required per 58.5(b)(2)
- Federal agencies are discouraged from supporting activities in wetlands unless there is **no practicable alternative**
- HUD has not promulgated regulations for implementing E.O. 11990 – but use the “**8-Step**” decision making process at 55.20
- Follow the “**8-Step**” decision making process at 55.20 just as you would for a project in the floodplain





# Wetlands decision-making process for HUD projects...



- Section 404 of the CWA requires a **permit** for the disposal of dredged or fill material into any “water of the U.S.”, which includes wetlands
- Enforced by EPA and USACE
- Section 404 requires public notices, permits, and conditions - - incorporate these elements, to the extent feasible, into the “**8-Step**” decision making process



# **WETLANDS IDENTIFICATION**



# Wetlands Identification

## Will my project affect a wetland?

### *Primary Source – USFWS National Wetlands Inventory data mapping*

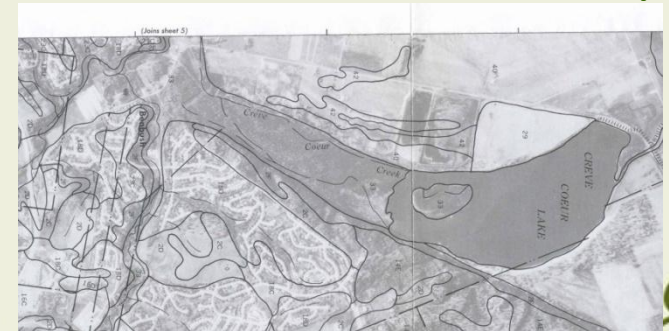
USFWS is the principal Federal agency that provides information to the public on the extent and status of the Nation's wetlands. The agency has developed a series of topical maps to show wetlands and deepwater habitats. Digital data can be viewed and downloads are at: <http://www.fws.gov/wetlands/Data/Mapper.html>

### *Other Mapping Sources*

#### USGS Topo Map

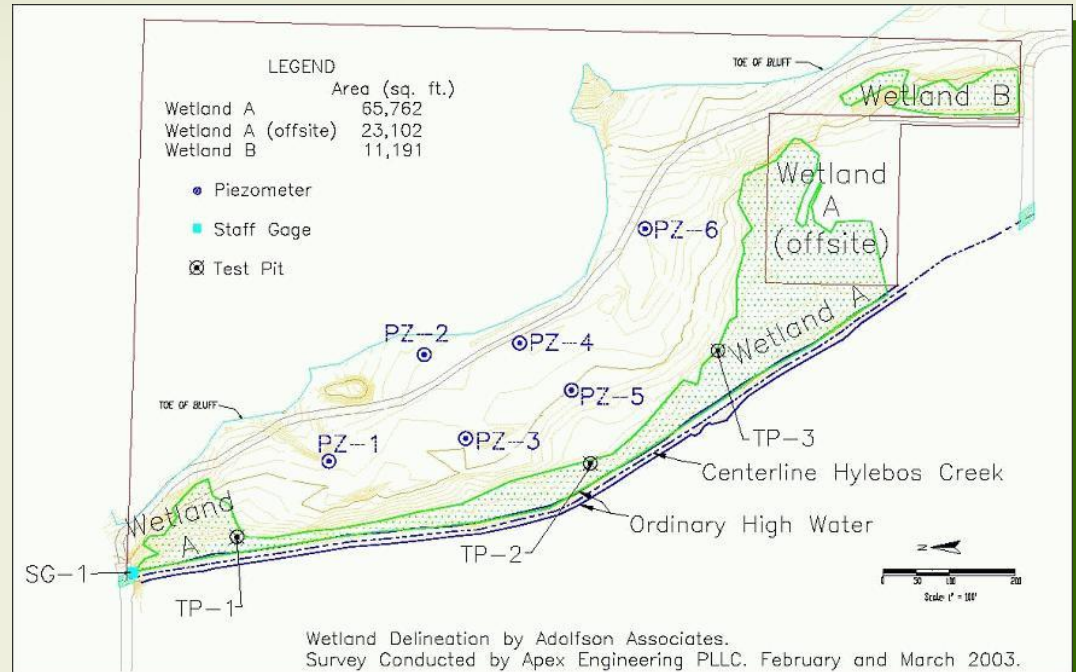


#### USDA Soil Survey



# Determining Project Impacts May Require Specialized Studies

Wetlands Delineation – establishes the boundary between uplands and wetlands, accomplished by a professional



# **ERR DOCUMENTATION**

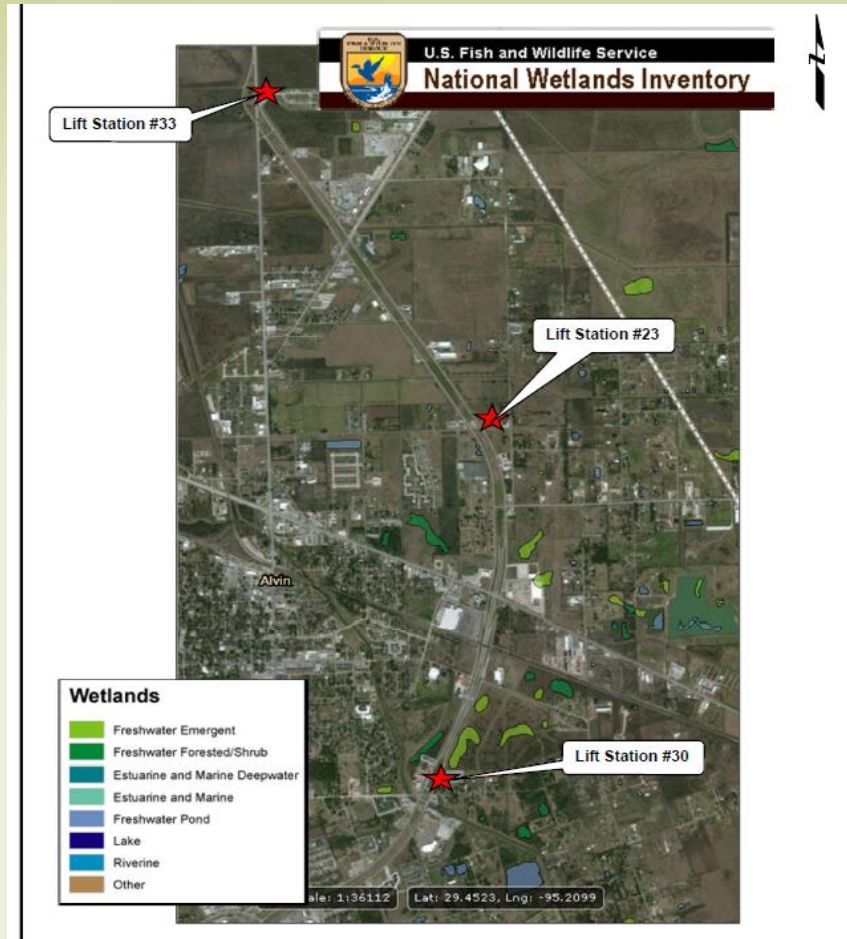




# ERR Documentation

- *Identification of wetland* - Document mapping or identification source:
  - NWI Maps
  - USGS Topo Maps
  - USDA Soil Survey Maps
  - Include project location on map
  - Wetlands delineation studies
- *Evaluation of Impacts* –
  - **8-Step Analysis** (24 CFR Part 55.20)
  - Include Direct and Indirect impacts
  - Include Cumulative Effects
- *Incorporation of Mitigation & Conditions into Project*
  - Best Management Practices
  - Restoration or Replacement
  - USACE Section 404 (Clean Water Act) permit requirements

# Example of Back-Up Documentation





# Questions?



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